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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 NATIVE VILLAGE OF KIVALINA and CITY
19 OF KIVALINA,

20 Plaintiffs,

21 vs.

22 EXXONMOBIL CORPORATION; *et al.*,

23 Defendants.

CASE NO. C 08-01138 SBA

**ORDER RE: SCHEDULING AND
FORMAT FOR MOTIONS TO
DISMISS**

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Pursuant to the Stipulation between Plaintiffs and Defendants ExxonMobil Corporation; BP America, Inc.; BP Products North America, Inc.; Chevron Corporation; Chevron USA, Inc.; ConocoPhillips Company; Shell Oil Company; The AES Corporation; American Electric Power Company, Inc.; American Electric Power Service Corporation; Duke Energy Corporation; DTE Energy Company; Edison International; MidAmerican Energy Holdings Company; Pinnacle West Capital Corporation; The Southern Company; Dynegy Holdings Inc., NRG Energy, Inc.; Reliant Energy, Inc.; Mirant Corporation; Peabody Energy Corporation; and Xcel Energy Inc. (“Defendants”) (collectively, the “Parties”), and FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED:

The Parties shall abide by the briefing schedule and format set forth below:

Fed. R. Civ. P. 12(b)(1) / 12(b)(6) Briefs

Utility Defendants¹

1. The Utility Defendants will file a single consolidated brief under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), not to exceed 50 pages, addressing counts 1, 2 and 4 of Plaintiffs’ Complaint. Plaintiffs will file a single consolidated opposition brief, not to exceed 50 pages. The Utility Defendants will file a single consolidated reply brief, not to exceed 30 pages (*i.e.*, no more than 60 percent of the pages allotted for the moving and opposition briefs, as contemplated by Local Rule 7-4(b)).

2. American Electric Power Company, Inc., Duke Energy Corporation, and Southern Company (the Utility Defendants named in count 3 of the Complaint) will file a single consolidated brief, not to exceed 25 pages, addressing count 3 of the Complaint. Plaintiffs will file a single opposition brief, not to exceed 25 pages. AEP, Duke and Southern will file a reply brief not to exceed 15 pages.

¹ For the purposes of this Order, the term “Utility Defendants” refers to the following Defendants: The AES Corporation, American Electric Power Company, Inc., American Electric Power Service Corporation, DTE Energy Company, Duke Energy Corporation, Dynegy Holdings Inc., Edison International, MidAmerican Energy Holdings Company, Mirant Corporation, NRG Energy, Inc., Pinnacle West Capital Corporation, Reliant Energy, Inc., Southern Company, and Xcel Energy Inc.

Oil Company Defendants²

3. The Oil Company Defendants will file a single consolidated brief under Fed. R. Civ. P. 12(b)(1) addressing counts 1 through 4 of the Complaint. The Oil Company Defendants also will file a single consolidated brief under Fed. R. Civ. P. 12(b)(6) addressing counts 1 through 4 of the Complaint. The total number of combined pages for these two briefs shall not exceed 75 pages. Plaintiffs' opposition brief to each such motion shall not exceed the length of the motion to which it responds. The Oil Company Defendants will file a single consolidated reply brief in support of each such motion, and each such reply shall not exceed 60% of the page length of the motion that it supports.

Peabody Energy Corp.

4. Peabody will file a single brief under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), not to exceed 50 pages. Plaintiffs will file an opposition brief not to exceed 50 pages. Peabody will file a reply brief not to exceed 30 pages.

* * *

5. In the alternative to the briefing format outlined in paragraphs 1 through 4 above, Plaintiffs retain the option to consolidate some or all of their briefs into one or more briefs, the total length of which shall not exceed the combined page total allocated for the Defendants' opening briefs.

6. The opening briefs discussed in paragraphs 1 through 5 above will be filed and served electronically on Plaintiffs on or before June 30, 2008. Plaintiffs' opposition briefs will be filed and served electronically on Defendants on or before September 18, 2008. Reply briefs will be filed and served electronically on Plaintiffs on or before November 18, 2008.

Fed. R. Civ. P. 12(b)(2) Briefs

7. The Non-Resident Utility Defendants (*i.e.* all Utility Defendants except Edison International) will file and serve electronically on Plaintiffs a single consolidated brief under Fed.

² For the purposes of this Order, the term "Oil Company Defendants" refers to the following Defendants: ExxonMobil Corporation, BP America, Inc., BP North America, Inc., Chevron Corporation, Chevron U.S.A., Inc., ConocoPhillips Company, and Shell Oil Company.

1 R. Civ. P. 12(b)(2), not to exceed 50 pages, on or before June 30, 2008.

2 8. The Oil Company Defendants, as defined in footnote 2 herein, will not file a brief
3 under Fed. R. Civ. P. 12(b)(2).


4 9. Peabody will file and serve electronically on Plaintiffs a brief under Fed. R. Civ. P.
5 12(b)(2), not to exceed 20 pages, on or before June 30, 2008.

6 10. The Parties will defer all further personal jurisdiction briefing and related matters,
7 including issues related to jurisdictional discovery, until after the Court has decided Defendants'
8 motions under Rules 12(b)(1) and 12(b)(6). In the event that further briefing on these issues is
9 necessary, or ordered by the Court, the Parties will negotiate a mutually convenient briefing
10 schedule at that time.

11 11. Insofar as this Order defers opposition and reply briefing on the issue of personal
12 jurisdiction, it does not effect a waiver of that defense by the Non-Resident Utility Defendants or
13 Peabody.

14
15 DATED: June 2, 2008

16 By: _____


The Hon. Sandra B. Armstrong
United States District Judge